



MODEL INDIVIDUAL OPT-OUT PROVISIONS AND FORM (NAECI 7.6(a)(ii))

Guidance note

It is not possible to apply a collective opt-out to Working Time Regulations 1998: R4(1) (as amended by Working Time Regulations 1999: R3(1)) which stipulates that, unless the employer has first obtained the employee's agreement in writing to perform such work, an employee's working time, including overtime, in any reference period which is applicable in his case, shall not exceed an average of 48 hours for each 7 days.

Individual employees working under the NAECI may choose to agree to work more than the 48 hour average weekly limit, by signing an individual opt-out form [NAECI 7.6(a)(ii) & WTR 1998: R5, as amended by WTR 1999: R3(2)].

Any employee signing an individual opt-out form remains entitled to use the procedures contained in NAECI and to enjoy all the other NAECI rates, benefits and allowances.

When an individual employee agrees to opt-out then:

- (a) The agreement shall apply indefinitely.
- (b) The agreement shall be terminable by the employee by giving at least 7 days and up to 3 months' notice to the employer in writing.
- (c) The employer will maintain records for a period of 2 years which:
 - (i) identify each employee who has signed an individual opt-out form; and
 - (ii) set out the terms on which the employee has agreed that the limit should not apply.

Individual employees cannot be forced to sign individual opt-out forms. In the event that an individual employee chooses not to sign an opt-out form they should not be subjected to any detriment in their employment. Their working hours may exceed 48 hours in any 7 days providing that, when they are averaged over successive reference periods of 52 weeks, the hours worked do not exceed 48 hours.

Any matters arising and/or disagreements may be progressed through the procedures contained in NAECI on the understanding that contractors are obliged to meet their contractual commitments.

If an employer does not envisage circumstances where, in any 52 week reference period, an individual employee's working time will exceed an average 48 hours for each 7 days, a formal written agreement with the individual employee to exclude the maximum 48 hour average is not required.

The NJC has agreed the following model individual opt-out form:

Please use appropriate form.

**WORKING TIME REGULATIONS 1998
NAECI MODEL INDIVIDUAL
OPT-OUT FORM**

1. I, *[name of employee]* agree that my average working time in any 7 days may exceed 48 hours over any successive 52 week reference period.
2. If I change my mind, I will give *[name of employer]* *[agreed period of time: at least 7 days and up to 3 months]* notice in writing.
3. This agreement is with immediate effect and will continue to operate indefinitely unless terminated in accordance with clause 2 above.

Signed _____

Dated _____